IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

08 C 1269

2008 FEB 28 PM 1:54

GRANT IMPORTING & DISTRIBUTING CO., INC., HAYES BEER DISTRIBUTING COMPANY, L&V DISTRIBUTORS, INC., CHICAGO BEVERAGE SYSTEMS LLC, JOSEPH MULLARKEY DISTRIBUTORS, INC., TOWN & COUNTRY DISTRIBUTORS, INC., KOZOL BROS., INC., FRED W. LOSCH BEVERAGE CO., and SCHAMBERGER BROS., INC.,

Plaintiffs,

vs.

No. 08 CH 07987

AMTEC INTERNATIONAL OF NY CORP., individually as d/b/a EUROPEAN BEER IMPORTERS, INC., and ADVANCED BRANDS & IMPORTING CO., INC., d/b/a STAR BRAND IMPORTS,

Defendants.

VERIFIED COMPLAINT

NOW COMES the Plaintiffs, GRANT IMPORTING & DISTRIBUTING CO., INC., HAYES BEER DISTRIBUTING COMPANY, L&V DISTRIBUTORS, INC., CHICAGO BEVERAGE SYSTEMS LLC, JOSEPH MULLARKEY DISTRIBUTORS, INC., TOWN & COUNTRY DISTRIBUTORS, INC., KOZOL BROS., INC., FRED W. LOSCH BEVERAGE CO., and SCHAMBERGER BROS., INC., and for their Complaint against the defendants, AMTEC INTERNATIONAL OF NY CORP., individually and d/b/a EUROPEAN BEER IMPORTERS, INC., and ADVANCED BRANDS & IMPORTING CO., INC., d/b/a STAR BRAND IMPORTS, state as follows:

NATURE OF ACTION

1. This is an action to enjoin the wrongful termination of current successful distribution relationships enjoyed by the Plaintiffs of a Polish manufactured beer in Cook County and the greater Chicagoland (Will County, Lake County, DuPage County Kane County, Kankakee County, Kendall County, Cook County, among others) area.

2. The attempted termination violates the Illinois Beer Industry Fair Dealing Act that controls the relationship between the parties. Under this Act, all agreements between brewers, master distributors and beer wholesalers can be terminated only for good cause, with the wholesaler having an opportunity to cure.

3. In the absence of a permanent injunction, Plaintiffs will be irreparably harmed. Plaintiffs have exclusively distributed the subject beer in the greater Chicagoland area for the past two to three years, and have built the market for the product through their marketing and distribution efforts. Indeed, sales of the subject beer represent significant portions of Plaintiffs' respective net profits from their beer sales, and it is likely that one or more of the Plaintiffs may not remain in business in the absence of an injunction.

THE PLAINTIFFS

4. Plaintiff Grant Importing & Distributing Co., Inc. (hereinafter "Grant") is an Illinois corporation located in Broadview, Illinois.

5. Plaintiff Hayes Beer Distributing Company (hereinafter "Hayes") is an Illinois corporation located in Alsip, Illinois.

6. Plaintiff L&V Distributors, Inc. (hereinafter "L&V") is an Illinois corporation located in Crystal Lake, Illinois.

7. Plaintiff, Chicago Beverage Systems LLC (hereinafter "CBS") is an Illinois limited liability company located in Chicago, Illinois.

8. Plaintiff Joseph Mullarkey Distributors, Inc. (hereinafter "Mullarkey") is an Illinois corporation located in Glenview, Illinois.

9. Plaintiff Town & Country Distributors, Inc. (hereinafter "Town & Country") is an Illinois corporation located in Itasca, Illinois.

10. Plaintiff Kozol Bros., Inc. (hereinafter "Kozol") is an Illinois corporation located in Joliet, Illinois.

11. Plaintiff Fred W. Losch Beverage Co. (hereinafter "Losch") is an Illinois corporation located in Lake Villa, Illinois.

12. Plaintiff Schamberger Bros., Inc., (hereinafter "Schamberger") is an Illinois corporation located in Villa Park, Illinois.

13. All of the party Plaintiffs are duly licensed Illinois distributors of malt beverages, and are "beer wholesalers" as defined by 815 ILCS 720/1.1(3).

THE DEFENDANTS

14. Defendant Advanced Brands & Importing Co., Inc., d/b/a Star Brand Imports (hereinafter "SBI") is a New York corporation doing business in the State of Illinois as an importer of alcoholic beverages, including malt beverages, with a local office in Lombard, Illinois. Since at least April 1, 2005, SBI has been the exclusive importer of Zywiec Beer into the greater Chicagoland area, including Cook County, Kane County, Kankakee County, Kendall County, Will County, DuPage County, and Lake County, among other Illinois Counties. Zywiec Beer is imported from and manufactured in Poland. SBI is a "Master Distributor" and "Brewer" as defined by 815 ILCS 720/1.1(4) & (5), with respect to its sales of Zywiec Beer.

15. Since on or about April 1, 2005, all of the party Plaintiffs have had an Agreement with SBI, as that term is defined in 815 ILCS 720/1.1(2), whereby said Plaintiffs were granted the right from SBI to be the exclusive beer wholesalers of Zywiec Beer in their respective geographic territories. All of the Plaintiffs have therefore purchased Zywiec Beer directly from SBI since 2005.

16. Many of the Plaintiffs were required, as part of their respective Agreements with SBI to distribute Zywiec Beer, to pay substantial monetary consideration to either SBI or prior beer wholesalers, for the right to wholesale Zywiec Beer in Illinois. For example, Plaintiff "Grant" paid SBI approximately $350,000.00 for the right to wholesale Zywiec Beer in Grant's respective territory.

17. All of the party Plaintiffs have expended substantial resources marketing Zywiec Beer since 2005, and have created substantial good will in that brand throughout their respective territories.

18. Over the last thirty (30) days, all of the party Plaintiffs have depleted their inventories of Zywiec Beer, and have repeatedly attempted to re-order same through SBI. SBI has been unwilling or unable to make shipments of Zywiec Beer to the Plaintiffs, advising Plaintiffs that the manufacturer

of Zywiec Beer has failed and refused to ship Zywiec Beer to SBI for distribution and import into Illinois and the United States.

19. Defendant Amtec International of NY, Corp. (hereinafter "Amtec"), is a New York corporation, with an office in Illinois at 2690 Lake Street, Melrose Park. Amtec is an importer of various products into the United States, including malt beverages. Amtec has recently been given the exclusive rights to import and distribute Zywiec Beer into the United States, including the greater Chicagoland area, from the manufacturers of said beer either under the Amtec name or doing business as European Beer Importers, Inc., (hereinafter "EBI"), an Illinois corporation believed to be wholly owned by Amtec and housed in the same Melrose Park location.

20. By reason of Amtec's and/or EBI's purported designation as the exclusive distributor of Zywiec Beer into the United States, and by reason of Amtec/EBI's succession to SBI for the right to distribute Zywiec Beer in the greater Chicagoland area, Amtec/EBI has become a Successor Brewer as defined under 815 ILCS 720/1.1(6), and as a "brewer" under 815 ILCS 720/1.1(4).

NATURE OF ACTION

21. Plaintiffs have attempted to discuss their wholesale Agreements and concerns regarding the sale of Zywiec Beer with Amtec/EBI, but Amtec/EBI has failed and refused to enter into such discussions.

22. Despite numerous requests from the Plaintiffs, Amtec/EBI has failed and refused to assure the Plaintiffs that their Agreements as exclusive beer wholesalers of Zywiec Beer in their respective territories would be honored, nor has Amtec/EBI agreed to distribute to the Plaintiffs any further cases of Zywiec Beer.

23. Amtec/EBI and/or SBI's failure and refusal to distribute Zywiec Beer to the Plaintiffs amounts to an attempted termination of the Agreements through which the Plaintiffs have become the exclusive wholesalers of Zywiec Beer in their respective territories. Neither SBI nor Amtec/EBI have provided any reasons for the attempted termination of the respective agreements, nor have they provided Plaintiffs with an opportunity to cure any purported cause for said terminations. In any event, the attempted termination of the Agreements are without good cause.

THE ILLINOIS BEER INDUSTRY FAIR DEALING ACT

24. Illinois has enacted the Beer Industry Fair Dealing Act, codified at 815 ILCS 720, *et seq.* (hereinafter the "Act"). The Act governs the relationship between the Plaintiffs (as beer wholesalers, as such term is defined in the Act), and SBI and Amtec/EBI (Master Distributor, Brewer and Successor Brewer under the Act), as such terms are defined in the Act. Pursuant to §2(B) of the Act, all of the terms and requirements of the Act are "incorporated into and shall be deemed a part of every agreement between brewers and wholesalers and shall govern all relations between brewers and their wholesalers. . .".

25. Pursuant to §3 of the Act, no brewer may cancel, fail to renew, or otherwise terminate an agreement without proper notice. Such notice of cancellation must be in writing and sent by certified mail and shall contain, *inter alia,* "a complete statement of the reasons therefore, including all data and documentation necessary to fully apprise the wholesaler of the reasons for the action".

26. Under §4 of the Act, a brewer cannot terminate, cancel or fail to renew an agreement without good cause, and (i) has made a good-faith effort to resolve the disagreements; (ii) has furnished notice under §3; and (iii) has provided the wholesaler a 90-day period to cure the stated reasons for the termination.

27. Good cause exists under the Act if the wholesaler "has failed to comply with essential and reasonable requirements imposed upon the wholesaler", which requirements may not be inconsistent with the Act.

28. Pursuant to §9 of the Act, a party affected by a violation of the Act has the right to maintain a civil action in a State or Federal court of competent jurisdiction located in Illinois. In any such action challenging a cancellation, termination or failure to renew, the brewer bears the burden of providing good cause.

29. The Act, at §9(5) grants the prevailing party in any action damages, costs, and discretionary attorneys' fees.

30. Section 4 of the Act prohibits a brewer, (as that term is defined under the Act to include master distributor and successor brewer) from failing to renew or otherwise terminating an agreement

absent good cause and good-faith efforts to resolve disagreements, and without prior notification to the affected party.

31. Amtec/EBI's and/or SBI's attempted cancellation/termination of the Plaintiffs' wholesale distribution rights to Zywiec Beer is in violation of the provisions of §§ 3, 4, 5, and 7 of the Act.

32. Plaintiffs have been advised by reliable sources that there are currently thirty (30) shipping containers of Zywiec Beer being shipped to Chicago, which are intended for the sale, use and distribution by Amtec/EBI in the greater Chicagoland area. Plaintiffs will suffer irreparable harm if Amtec/EBI is not temporarily and permanently enjoined from receiving and distributing this beer shipment upon its arrival in Chicago, which is believed to be arriving on or about March 1, 2008.

33. If Amtec/EBI is not enjoined from taking possession of said beer shipment, Plaintiffs' respective businesses will be irreparably harmed. Many of Plaintiffs' employees may lose their jobs if Plaintiffs suffer the loss of their wholesaling rights to Zywiec Beer. In addition, the loss of the Zywiec Beer Brand will cause Plaintiffs immeasurable loss of goodwill and reputation in their respective wholesale markets, and may affect their distribution and sale of other malt beverage products.

34. Plaintiffs therefore have no adequate remedy at law.

FIRST CLAIM FOR RELIEF
(Declaratory Relief)

35. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 34 above.

36. Defendants have violated the Illinois Beer Industry Fair Dealing Act in the following manner:

> (a) By attempting to terminate or cancel the parties' Agreements without proper notice and an opportunity to cure, in violation of §§3, 4, and 5 of the Act.
>
> (b) By attempting to terminate or cancel or materially alter the Agreements without good cause, in violation of §§3 and 4 of the Act.

37. By reason of Defendants' breaches of the Act, Plaintiffs are entitled to a declaration pursuant to §9(2) of the Act, (i) declaring the attempted termination or cancellation of the Plaintiffs'

distribution agreements null and void, (ii) declaring that the Defendants are in violation of the provisions of the Act; and (iii) declaring that Illinois law governs the relationship between the parties as reflected in the provisions of the Act.

SECOND CLAIM FOR RELIEF
(Injunctive Relief)

38. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 37 above.

39. By reason of Defendants' numerous violations of the Act, Plaintiffs are entitled to a temporary restraining order under §9(3) of the Act, enjoining Amtec/EBI and its agents from implementing or taking any steps in furtherance of the distribution of any Zywiec Beer product arriving in Chicago until such time as the Court may hold a hearing to determine Plaintiffs' right to permanently enjoin Defendants from any further violations of the Act against Plaintiffs.

THIRD CLAIM FOR RELIEF
(Damages)

40. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 39 above.

41. By reason of the foregoing violations of the Act, Plaintiffs have been damaged in an amount to be determined at trial, but not less than the amount of $50,000.00 per Plaintiff.

FOURTH CLAIM FOR RELIEF
(Unjust Enrichment and Misappropriation of Goodwill)

42. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 41 above.

43. As a result of Plaintiffs' efforts, Plaintiffs developed substantial goodwill relating to the Zywiec Beer brand in the territories where Plaintiffs distributed such beer.

44. Goodwill constitutes intangible assets of the Plaintiffs.

45. By terminating or canceling Plaintiffs' exclusive distribution rights, Amtec/EBI has attempted to illegally and impermissibly appropriate for itself Plaintiffs' goodwill, without any compensation to Plaintiffs.

46. Amtec/EBI has misappropriated the property rights and goodwill of the Plaintiffs that in equity and good conscience Amtec should not be permitted to retain without compensation.

47. By reason of the foregoing, Amtec/EBI will be unjustly enriched in an amount to be determined at trial, but not less than the amount of $50,000.00 per Plaintiff.

FIFTH CLAIM FOR RELIEF
(Breach of the Covenant of Good Faith and Fair Dealing Against Defendants)

48. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 47 above.

49. Amtec/EBI and SBI breached the covenant of good faith and fair dealing contained in every Agreement, by attempting to terminate Plaintiffs without just cause and without proper notice, by improperly eliminating Plaintiffs' territory, by refusing to fill orders for Plaintiffs, and inducing Plaintiffs to create substantial goodwill and value in Zywiec Beer, and then taking away those rights without compensation.

50. By reason of the Defendants' breach of the covenant of good faith and fair dealing, Plaintiffs have been damaged in an amount to be determined at trial, but not less than the amount of $50,000.00 per Plaintiff.

SIXTH CLAIM FOR RELIEF
(Unjust Enrichment/Misappropriation of Intellectual Property Rights)

51. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 50 above.

52. The goodwill established by Plaintiffs in their territories through the investment of time and money by Plaintiffs over a period of years, in effect creating the market for Zywiec Beer, has made Plaintiffs' intellectual property rights - consisting of the distribution rights to Zywiec Beer in their territories - extremely valuable.

53. As the owners and creators of these intellectual property rights, Plaintiffs are exclusively entitled to the unrestricted, unencumbered use, enjoyment and value of such rights.

54. As the owners and creators of these intellectual property rights, Plaintiffs are entitled to compensation for the infringement and/or misappropriation of such rights.

55. By refusing to sell Zywiec Beer to Plaintiffs, and by attempting to distribute Zywiec Beer in Plaintiffs' territories, Amtec/EBI has misappropriated the Plaintiffs' intellectual property rights.

56. By reason of the foregoing, Plaintiffs have been damaged in an amount to be determined at trial, but not less than the amount of $50,000.00 per Plaintiff.

WHEREFORE, Plaintiffs, **GRANT IMPORTING & DISTRIBUTING CO., INC., HAYES BEER DISTRIBUTING COMPANY, L&V DISTRIBUTORS, INC., CHICAGO BEVERAGE SYSTEMS LLC, JOSEPH MULLARKEY DISTRIBUTORS, INC., TOWN & COUNTRY DISTRIBUTORS, INC., KOZOL BROS., INC., FRED W. LOSCH BEVERAGE CO.,** and **SCHAMBERGER BROS., INC.,** respectfully request judgment as follows:

(i) On the First Claim for Relief, a declaration (a) declaring the attempted termination or cancellation of the parties' distribution Agreements null and void; (b) declaring that Amtec/EBI is in violation of the provisions of the Act; (c) declaring that Illinois law governs the relationship between the parties as reflected in the provisions of the Act;

(ii) On the Second Claim for Relief, granting both a temporary restraining order and a permanent injunction, enjoining Amtec/EBI and its agents from implementing or taking any steps in furtherance of their attempted termination of Plaintiffs' distribution rights, and enjoining any further and other violations of the Act;

(iii) On the Third Claim for Relief, awarding Plaintiffs damages against Defendant Amtec/EBI in an amount to be determined at trial, but not less than the amount of Fifty Thousand Dollars ($50,000.00) per Plaintiff, plus interest and attorneys' fees;

(iv) On the Fourth Claim for Relief, awarding damages against Defendant Amtec/EBI in an amount to be determined at trial, but not less than the amount of Fifty Thousand Dollars ($50,000.00) per Plaintiff, plus interest;

(v) On the Fifth Claim for Relief, awarding damages against Defendant Amtec/EBI in an amount to be determined at trial, but not less than the amount of Fifty Thousand Dollars ($50,000.00) per Plaintiff, plus interest;

(vi) On the Sixth Claim for Relief, awarding damages against Defendant Amtec/EBI in an amount to be determined at trial, but not less than the amount of Fifty Thousand Dollars ($50,000.00) per Plaintiff, plus interest;

(vii) Awarding Plaintiffs their costs and attorneys' fees against Defendant Amtec/EBI; and

(viii) Such other and further relief as this Court deems just and proper.

LAW OFFICES OF BOZICH & KORN

By: Bruce M. Bozich
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STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

VERIFICATION

I, DONALD G. GRANATO, being first duly sworn upon oath, state that I am the President of GRANT IMPORTING & DISTRIBUTING CO., INC., that I have read the above and foregoing Verified Complaint, and that the facts contained therein are true and correct to the best of my knowledge and belief.

GRANT IMPORTING & DISTRIBUTING CO., INC.

By: Donald G. Granato
Donald G. Granato, President

SUBSCRIBED and SWORN to before me this 28 day of February, 2008.

Notary Public

OFFICIAL SEAL
BRUCE M BOZICH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:10/28/10